

REPORT OF THE COMMITTEE ON ZONING, PLANNING AND HOUSING

Voting Members:

Ron Menor, Chair; Tommy Waters, Vice-Chair;
Brandon J.C. Elefante, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
February 27, 2020

Honorable Ikaika Anderson
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, Planning and Housing, to which was referred Bill 58 (2019) entitled:

"A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT HALEIWA, OAHU, HAWAII,"

which passed Second Reading and was the subject of a Public Hearing held at the February 19, 2020 Council meeting, reports as follows:

The purpose of Bill 58 (2019) is to rezone an approximately 13,137 square-foot portion (the "zone change area") of a 23,137 square-foot parcel of land located at 66-540-D Kamehameha Highway in Haleiwa, Oahu (the "Property"), from the R-5 Residential District to the B-1 Neighborhood Business District, at the request of Haleiwa KEM 7309, LLC (the "Applicant"). The remaining 10,000 square-foot portion of the Property will remain in the R-5 Residential District. The Applicant proposes to continue the existing uses on the Property, consisting of a parking lot and storage shed on the proposed B-1 Neighborhood Business portion, and an existing single-family detached dwelling on the remaining R-5 Residential portion.

Your Committee finds that the Planning Commission, after a public hearing held on October 2, 2019 at which no public testimony was received, voted to recommend approval of the rezoning in concurrence with the recommendation of the Department of

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **MAY 20 2020**

COMMITTEE REPORT NO. **98**

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Planning and Permitting ("DPP") in the attachment to Departmental Communication 727 (2019).

Your Committee finds that at a Public Hearing held on February 19, 2020 by the City Council, no public testimony was received on the proposed rezoning.

In Committee Report No. 60 (2020), which the Council adopted at its meeting on February 19, 2020, your Committee discussed the conditions recommended by the DPP to be included in a Unilateral Agreement for this rezoning, as set forth in the attachment to Departmental Communication 729 (2019). Attached hereto is a proposed Unilateral Agreement (draft dated February 21, 2020), submitted by the Applicant. The proposed Unilateral Agreement reflects the foregoing conditions.

Your Committee finds that the conditions recommended by the DPP to be included in a Unilateral Agreement for this rezoning are in conformance with the criteria specified in Section 21-2.80 (b) and (c) of the Revised Ordinances of Honolulu 1990 ("ROH"). In particular, your Committee finds that the conditions appear to be necessary to prevent circumstances that may be adverse to public health, safety, and welfare, and fulfill needs directly emanating from the proposed zone change.

At your Committee's meeting on February 27, 2020, the DPP Acting Director testified in support of the Bill. The Applicant's agent testified in support of the Bill. Your Committee received no oral or written testimony on the Bill.

Your Committee finds that the DPP and the Planning Commission have found that the rezoning proposed in this Bill is consistent with the vision, policies, and guidelines set forth in the North Shore Sustainable Communities Plan established by ROH Chapter 24, Article 8.

CITY COUNCIL

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HONOLULU, HAWAII

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Your Committee further finds that, pursuant to ROH Chapter 24, Article 8, responsible City and State agencies have indicated that adequate public facilities and utilities for the proposed development will be available at the time of occupancy, or that conditions to ensure adequacy are otherwise sufficiently addressed.

Your Committee on Zoning, Planning and Housing is in accord with the intent and purpose of Bill 58 (2019) and recommends that, following the Applicant's recordation in the Bureau of Conveyances, or the Land Court, or both as appropriate, of a Unilateral Agreement that conforms in all material respects to the proposed Unilateral Agreement attached hereto, the Bill pass Third Reading. Pursuant to standard Council practice, the Clerk is directed to attach a copy of the executed and recorded Unilateral Agreement as Exhibit "B" to the Bill after transmission of the copy to the Council by the Department of the Corporation Counsel. (Ayes: Elefante, Kobayashi, Menor – 3; Ayes with reservations: None; Noes: None; Excused: Manahan, Waters – 2.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **MAY 20 2020**

COMMITTEE REPORT NO. **98**

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICK-UP (X) TO:

CADES SCHUTTE LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Attn: Calvert G. Chipchase, Esq.

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this ____ day of _____, 2020, by HALEIWA KEM 7309 LLC, a Hawai'i Limited Liability Company, whose address is 59-134 Paumalu Place, Hale'iwa, Hawai'i 96712 (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Hale'iwa, O'ahu, consisting of approximately 23,137 square feet, described as Tax Map Key No. (1) 6-2-007: 016, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of a 13,137-square foot portion of the Land, more particularly described in Exhibit B attached hereto and incorporated herein, from the R-5 Residential District to the B-1 Neighborhood Business District (the "zone change"); and

WHEREAS, no construction or development is proposed as a part of the requested zone change; and

WHEREAS, the portion of the Land subject to the zone change, consisting of 13,137 square feet, is depicted as the cross-hatched area designated as the proposed zone change area on the portion of Zoning Map No. 17, attached hereto as Exhibit C and made a part hereof (the "zone change area"); and

WHEREAS, the Declarant is also the owner in fee simple of a parcel of land adjacent to the Land, consisting of approximately 20,154 square feet, described as Tax Map Key No. (1) 6-2-007: 017, and zoned B-1 Neighborhood Business District; and

WHEREAS, a public hearing regarding the change in zoning, Bill 58 (2019), was held by the Council on February 19, 2020; and

WHEREAS, the Council recommended by its Zoning, Planning, and Housing Committee Report No. ____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance").

NOW THEREFORE, The Declarant hereby covenants and declares as follows:

1. Compliance with Conditional Use Permit No. 2016/CUP-6. Within 180 days after enactment of the Rezoning Ordinance, the Declarant shall provide to the Department of Planning and Permitting ("DPP") a copy of the Joint Development Agreement recorded with the State of Hawaii Bureau of Conveyances, pursuant to that certain conditional use permit minor (DPP File No. 2016/CUP-6), which permitted the joint development of two parcels identified as Tax Map Key Nos. 6-2-007:016 and 6-2-007:017.
2. Compliance with applicable development standards. Within 180 days after enactment of the Rezoning Ordinance, the Declarant shall provide to the DPP for review and approval a site plan and elevations for the storage shed and carport located within the zone change area, showing compliance with the applicable development standards, including but not limited to yard setbacks, transitional height setbacks, and screening requirements under the LUO.
3. Transportation. Prior to the submittal of a building permit application for any change in existing land use or new development within the zone change area, the Declarant shall consult with the State of Hawaii Department of Transportation ("HDOT") as to whether an update to the Traffic Assessment Report ("TAR") dated March 12, 2019 is required. If required, the Declarant shall submit to the HDOT for its review and acceptance, an updated TAR that more accurately reflects traffic volumes based on the proposed change in existing land use or new development, and evaluates whether the change in the existing land use or new development is consistent with the conclusions made by the initial TAR. The Declarant shall submit to the DPP as a part of any building permit application for the zone change area, documentation of the Declarant's consultation with the HDOT, and if an updated TAR is required, documentation of the HDOT's review and acceptance of the updated TAR.
4. Compliance with Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that any future development of the Land complies with all applicable LUO and other governmental provisions and requirements.
5. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of, or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.
6. Noncompliance with Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the City Council and may seek civil enforcement or take appropriate action to terminate or stop any future development of the Land until applicable conditions are met, including but not limited withholding issuance of any permits related to the future development of the Land. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of

the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW THEREFORE, Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety, and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That any development of the zone change area shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the zone change area, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

DRAFT
2/21/20
Bill 58 (2019)
Proposed UA

IN WITNESS WHEREOF, Haleiwa 7309 KEM, LLC has executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first written above.

DECLARANT:

HALEIWA KEM 7309, LLC,

a Hawai'i limited liability company

By: _____

Name:

By: _____

Name:

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2020, before me personally
appeared _____, to me personally known, who, being by me duly sworn or
affirmed, did say that such person executed the foregoing instrument as the free act and deed of such
person, and if applicable in the capacity shown, having been duly authorized to execute such
instrument in such capacity.

Signature: _____

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Amendment to
Unilateral Agreement and Declaration for Conditional Zoning

Doc. Date: _____

No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2020, before me personally
appeared _____, to me personally known, who, being by me duly sworn or
affirmed, did say that such person executed the foregoing instrument as the free act and deed of such
person, and if applicable in the capacity shown, having been duly authorized to execute such
instrument in such capacity.

Signature: _____

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

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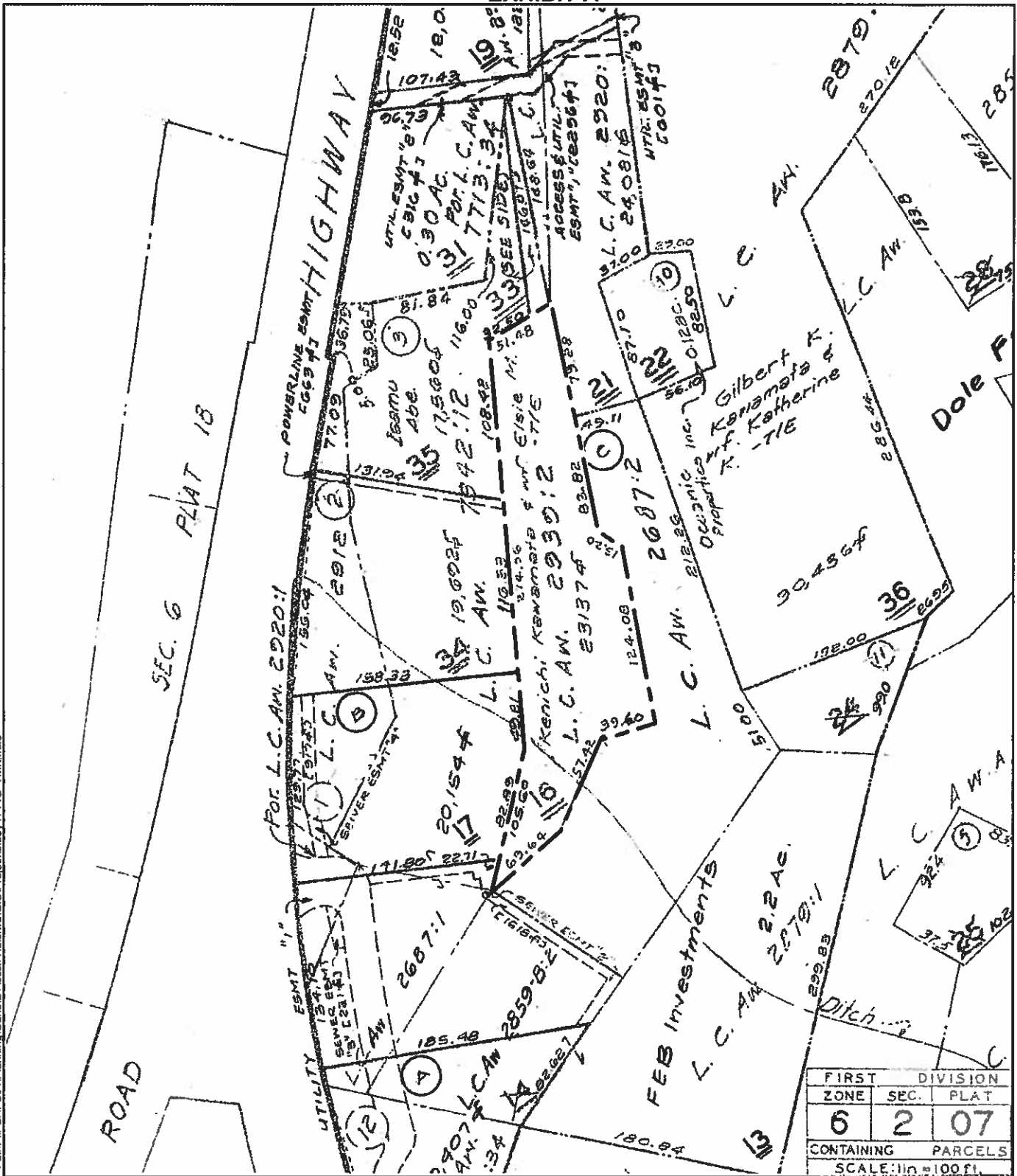
Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A

Path: \\PBRFS04\Planning\Oahu\D\Ascoli Halerwa\GIS\Project\8.5by11 FIG TMK.mxd



LEGEND

TMK: 6-2-007:016

Tax Map

HALE'IWA ZONE CHANGE

Haleiwa KCM 7/09, LLC

Island of Oahu



Linear Scale (feet)



Source: Honolulu Land Information System, Department of Land and Natural Resources, City and County of Honolulu, 1976. Pictometry, 2013.

Disclaimer: This Graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

EXHIBIT A

All of that certain piece or parcel of land situate at Paalaa, Waialua, City and County of Honolulu, State of Hawaii, described as follows:

Being all of Royal Patent 906, Land Commission Award 2939, Apana 2 to Kahoohalahala, more particularly described as follows:

Beginning at the South corner of this parcel of land, being also the common corner of Royal Patent 883, Land Commission Award 2687, Apana 1 to Leleahina; Royal Patent 903, Land Commission Award 2859-B, Apana 2 to Kaluhia; Royal Patent 883, Land Commission Award 2687, Apana 2 to Leleahina; and Royal Patent 1479, Land Commission Award 7342, Apana 12 to Kuokoa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "O'REILLY" being 7,406.90 feet North and 12,506.99 feet West and thence running by azimuths measured clockwise from true South and thus bounded and described per survey of Walter P. Thompson, Registered Surveyor, dated January 28, 1964, as follows:

1. 193° 04' 105.60 feet along R. P. 1479, L. C. Aw. 7342, Ap. 12 to Kuokoa;
2. 174° 34' 274.56 feet along R. P. 1479, L. C. Aw. 7342, Ap. 12 to Kuokoa;
3. 241° 49' 51.48 feet along R. P. 1479, L. C. Aw. 7342, Ap. 12 to Kuokoa;
4. 347° 08' 79.28 feet along R. P. 895, L. C. Aw. 2920, Ap. 2 to Hika;
5. 349° 34' 83.82 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
6. 297° 34' 13.20 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
7. 349° 34' 124.08 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
8. 71° 04' 39.60 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
9. 23° 34' 57.42 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
10. 46° 34' 69.42 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina to the point of beginning and containing an 23,137 square feet, more or less.

TOGETHER WITH all improvements located thereon, and all rights to water with respect to the above-described property.

Being all the property described in the following:

DEED

Recorded : February 3, 2010 in the Bureau of Conveyances, State of Hawaii as Document No. 2010-015716
Grantor : TODD WHITE and MARSHA H. WHITE

EXHIBIT A

Grantee THE TMKGRT REVOCABLE LIVING TRUST by TRUSTEES
TODD WHITE Grantor Trustee and MARSHA H. WHITE Successor
Trustee

SUBJECT, HOWEVER, to:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate Number 9826, on December 17, 2008, designated Job No. ---, as follows:
 - A) Chainlink fence crosses into Subject Lot from Lot B and C by as much as 0.8 feet or a difference of 84.6 feet.
 - B) Wooden fence crosses into Subject Lot from Lot 3 by as much as 0.6 feet for a distance of 32.8 feet.
 - C) Concrete slab crosses into Lot 2 from Subject Lot by as much as 1.5 feet for a distance of 97.4 feet.
 - D) Hose bib crosses into Lot 2 from Subject Lot by as much as 0.8 feet.
 - E) CMU wall crosses into Parcel 21 from Subject Lot by as much as 9.0 feet for a distance of 9.3 feet.

EXHIBIT B

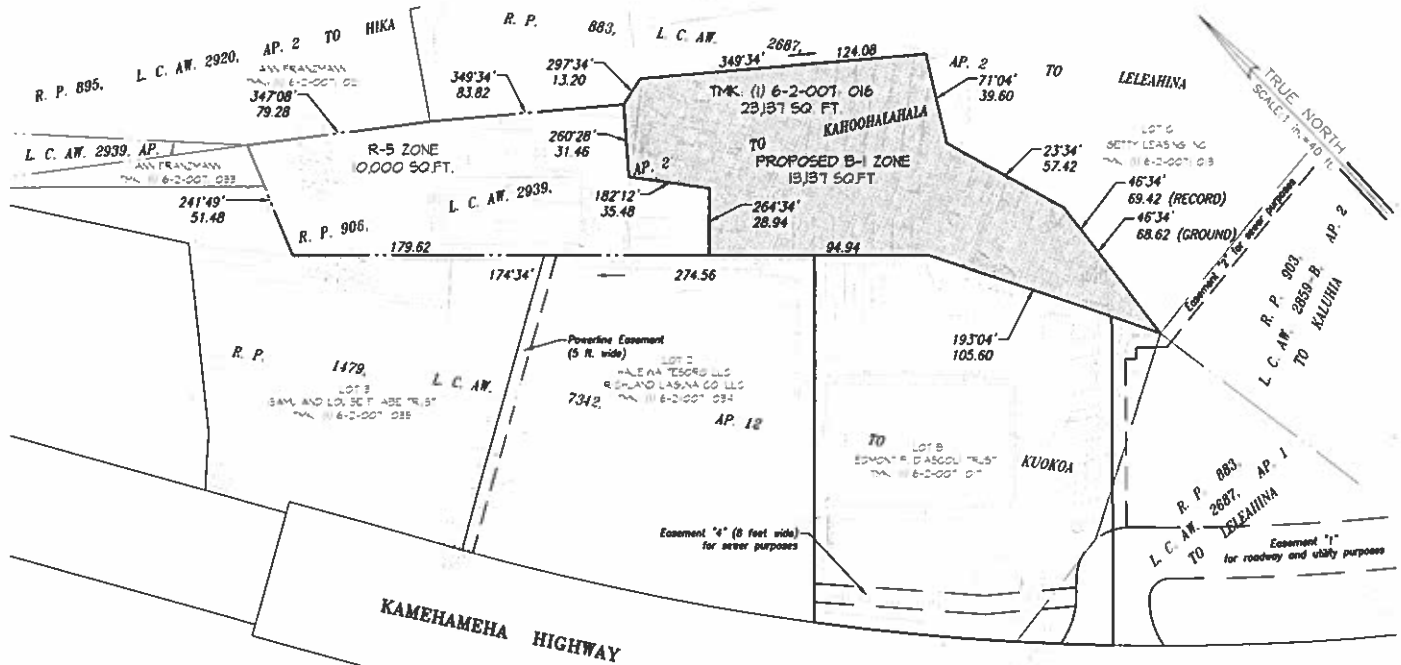


EXHIBIT MAP

SHOWING CHANGE IN ZONING

OF TMK: (1) 6-2-007: 016

FROM RESIDENTIAL R-5 TO BUSINESS B-1

BEING A PORTION OF R.P. 906, L.C. AW. 2939, AP. 2 TO KAHOOHALAHALA

AT PAALAA, WAIALUA, OAHU, HAWAII

OWNER: HALEWA KEM 7309 LLC

SITE ADDRESS: 66-540D KAMEHAMEHA HIGHWAY
HALEWA, HAWAII 96712

NOTES:

Azimuths shown on this map are referred to Government Survey Triangulation Station "O RILLY" Δ.

Adjoining Lot information has been taken from records filed at the real property mapping branch.

ABBREVIATIONS:

a/c	air-conditioning	ft	feet
ac	asphalt concrete	hb	hose bib
bo	bollard	in	inch
cmu	concrete masonry unit	mh	manhole
conc.	concrete	tbx	telephone box
ebx	electrical box	sv	water valve
fd.	found		

ATA Austin Tsutsumi
ASSOCIATES, INC.
CIVIL ENGINEERS • SURVEYORS (HONOLULU) • WAIALUA • HILO, HAWAII

JANUARY 30, 2019

1" = 17' = 130 SO. FT.

EXHIBIT B

PROPOSED B-1 ZONING AREA

LOT 2

Being Portion of Royal Patent 906, Land Commission Award 2939, Apana 2 to Kahoohalahala. Situate at Paalaa, Waialua, Oahu, Hawaii.

Beginning at the south corner of this parcel of land, being also the common corner of Royal Patent 883, Land Commission Award 2687, Apana 1 to Leleahina, Royal Patent 903, Land Commission Award 2859-B, Apana 2 to Kaluhia, Royal Patent 883, Land Commission Award 2687, Apana 2 to Leleahina, and Royal Patent 1479, Land Commission Award 7342, Apana 12 to Kuokoa, the coordinates of said point of beginning referred to Government Survey Triangulation Station "O'REILLY" being 7,406.90 feet North and 12,506.99 feet West and running by azimuths measured clockwise from true South:

1. 193° 04' 105.60 feet along R. P. 1479, L. C. Aw. 7342, Ap. 12 to Kuokoa;
2. 174° 34' 94.94 feet along same;
3. 264° 34' 28.94 feet along the remainder of R. P. 906, L. C. Aw. 2939, Ap. 2 to Kahoohalahala;
4. 182° 12' 35.48 feet along same;
5. 260° 28' 31.46 feet along same;
6. 297° 34' 13.20 feet along R. P. 883, L. C. Aw. 2687, Ap. 2 to Leleahina;
7. 349° 34' 124.08 feet along same;
8. 71° 04' 39.60 feet along same;
9. 23° 34' 57.42 feet along same;



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUHAH STREET, SUITE 207
HILO, HAWAII 96720

EXHIBIT B

10. 46° 34' 68.62 feet along same to the point of beginning and containing an area of 13,137 square feet.

The above description is based on ground dimension. Record description of the boundary exceeds closure by 0.8 feet.



Description Prepared By:

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Erik S. Kaneshiro".

ERIK S. KANESHIRO

Licensed Professional Land Surveyor
Certificate No. 9826

Honolulu, Hawaii
January 30, 2019
TMK: (1) 6-2-007: POR.016

X:\2018\18-067\Descriptions\PROPOSED B-1 ZONING AREA.docx



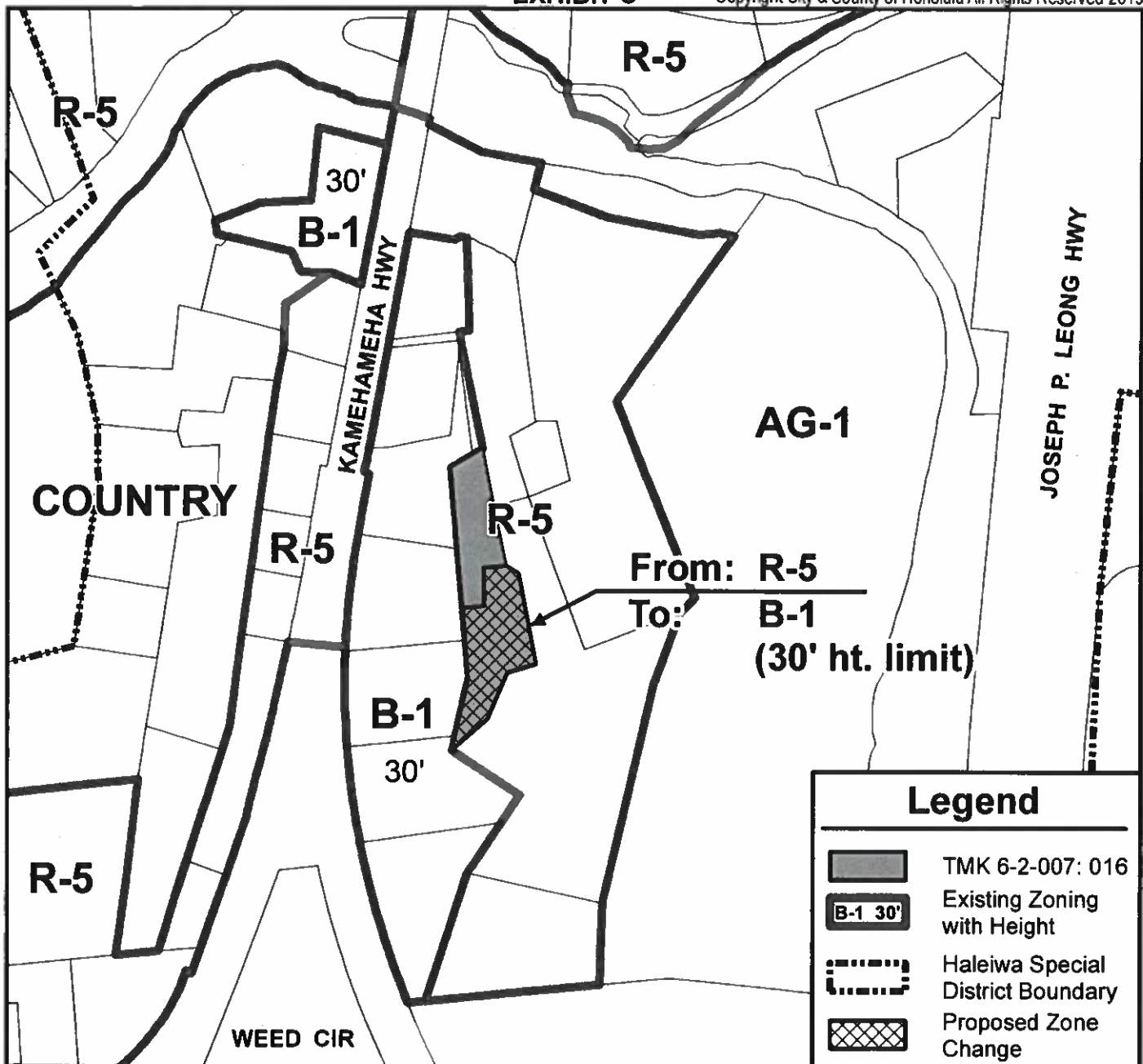
AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

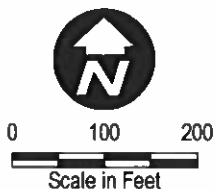
1871 WILI PALOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUHAHI STREET, SUITE 213
HILO, HAWAII 96720



**PORTION OF
ZONING MAP NO. 17
MOKULEIA - WAIALUA - HALEIWA**

Land situated approximately 450 feet northeast from the intersection of Kamehameha Highway and Weed Circle.



APPLICANT: HALEIWA KEM 7309, LLC

TAX MAP KEY(S): 6-2-007: 016 (portion)

FOLDER NO.: 2019/Z-3

LAND AREA: 13,137 S.F.

PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
CITY AND COUNTY OF HONOLULU

PUBLIC HEARING: PLANNING COMMISSION

CITY COUNCIL

ORD. NO.
EFF. DATE:

2019/Z-2